PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Domenico ARABINO

Appln. No.: 10/038,586

Confirmation No.: 1442

Filed: January 8, 2002

Attorney Docket No: Q67753

Group Art Unit: 3634

Examiner: Gregory Strimbu

For: WEATHER STRIP WITH A PRESSURE SENSITIVE SAFETY SWITCH FOR AN OPENING WITH WHICH A MOTOR-DRIVEN CLOSURE ELEMENT IS ASSOCIATED

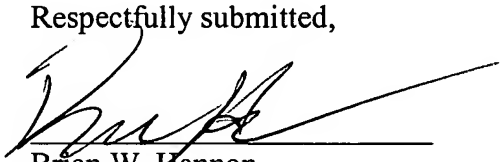
SUBMISSION OF APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an Appeal Brief. A check for the statutory fee of $500.00 is attached. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account. A duplicate copy of this paper is attached.

Respectfully submitted,



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WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: December 30, 2004

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

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I. REAL PARTY IN INTEREST

The real party in interest is Metzeler Automotive Profile Systems, Italy.

II. RELATED APPEALS AND INTERFERENCES

There are no known related appeals and interferences.

III. STATUS OF CLAIMS

As originally filed, the application included a single Claim 1. During the course of prosecution, Claims 2-4 were added and claims 2 and 3 were subsequently cancelled. Thus, the only claim being appealed is independent claim 4. Claim 4 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in Figure 1 in view of Griesbach et al. (U.S. Patent No. 6,373,005).

IV. STATUS OF AMENDMENTS

No amendments were filed subsequent to Final Rejection.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The subject matter of Claim 4 is described in Appellant's specification at page 5, line 8+, as amended in the Amendment filed on September 20, 2002. The invention is directed to a weather strip for an edge of an opening adapted to be closed by a motor driven closure element.

As in the prior art embodiment, the weather strip 1′ is comprised of a U-shaped securing portion 2′ having a transverse portion 21 having parallel legs 22 extending outwardly from said transverse portion 21 at substantially right angles thereto. A wall 25 is secured at opposite ends to opposite ends of the transverse portion 21 to define a transverse compartment 23 for receiving a pressure sensitive element 14 identical in construction the pressure sensitive element 14 shown in figures 1-4.

According to the present invention, a central projection 29 is disposed on the transverse portion 21 and projects into the compartment 23 in engagement with one side of the pressure sensitive element 14. The opposite side of the pressure sensitive element 14 is disposed in engagement with the inner surface of the wall 25.

In operation, if an obstruction is located between the closure element 8 and the weather strip, pressure will be applied to the wall 25 which in turn presses the electrically conductive strip 17 into engagement with the inner conductive element 16 at a point adjacent the protrusion 29. The clearance in the compartment 23 on opposite sides of the protrusion 29 allows flexing of the pressure sensitive element to bring the conductive strips into engagement with each other. Thus there is no danger of the protrusion 29 being movable relative to a central portion of the

pressure sensitive element similar to that which occurred with the protrusion 19 in the prior art embodiment of figures 1-4.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in Figure 1 in view of Griesbach et al.

VII. ARGUMENT

The Examiner has taken the position that it would be obvious to provide the admitted prior art shown in Figure 1 of the present application with a protrusion on the base member similar to the protrusion 38 of Griesbach et al. to allow for the accurate transmission of force to the pressure sensor.

It is submitted that the structure and operation of the Griesbach et al. jamming-detection device is so entirely different in principle and operation from the admitted prior art of Figure 1 that one skilled in the art would not even remotely consider shifting the projection 19 as shown in Figure 1 of the present application to the transfer space member in view of the teachings of Griesbach et al.

In Griesbach et al. the arrangement is such that when an obstacle 39 as shown in Figure 2 is trapped between the side window pane 4 and the sealing member 2, the obstacle 39 transmits the closing force F to the side legs 16 of the sealing member 2. The side legs in turn transmit the force to the edge portions 36 of the pressure sensor 32 which are non-active (column 5 lines 59-60). As a consequence, the non-active edge portions 36 of the sensor 32 are displaced relative to the central active area 34 thereof which is substantially immobile since it rests against a relatively undeformable and stable area 26 of the sealing member (column 6, lines 8-9; the central area largely retaining its shape...";column 6, lines 10-11: the dimensionally stable central area 26..."). Therefore, it is readily apparent that the arrangement of Griesbach et al is of the kind in which when an obstacle becomes trapped between the window pane and the sealing

member forces are exerted onto the non-active areas of the sensor so as to displace them relative to the central active area thereof which remains substantially stationary.

Furthermore, it is also readily apparent that the arrangement of Griesbach et al. is such that the path or direction of displacement of the window pane intersects the active area 34 of the pressure sensor and when an obstacle becomes trapped the lower wall of the compartment containing the pressure switch is not subjected to any forces whatsoever since, as summarized above, the closing force is instead transmitted to the side legs of the sealing member and to the non-active edge portions of the sensor.

Quite differently therefrom, the arrangement of the admitted prior art (and the arrangement of the invention) is such that the path or direction of displacement of the window pane does not intersect at all the central active area of the pressure switch and when something becomes trapped the closing force is transmitted to the lower wall of the compartment containing the pressure switch and to the central active area of the latter.

In summary, while there is some superficial resemblance of the projection 38 of the Griesbach et al. to the projection 29 of the present invention. The nature and operation of the Griesbach et al. device is so different from the nature and operation of the admitted prior art of Figure 1 of the present application that one skilled in the art would not consider combining the references in the manner proposed by the Examiner. Such a suggestion could only come from the disclosure of the present invention which can not be relied upon when combining references.

If anything, Griesbach et al. teaches that it is beneficial to have a projection which contacts a portion of the pressure sensor. However, the admitted prior art arrangement already includes a projection 19 that contacts the pressure sensor. There is absolutely no teaching or suggestion in Griesbach et al. that would have motivated a person of ordinary skill in the art to modify the admitted prior art device by moving the projection 19 to the transverse portion 21 of U-shaped securing portion 2', as the Examiner alleges. Indeed, the Examiner has failed to explain how such a modification would "allow for the accurate transmission of force to the pressure sensor," which the Examiner asserts to be the motivation for the modification.

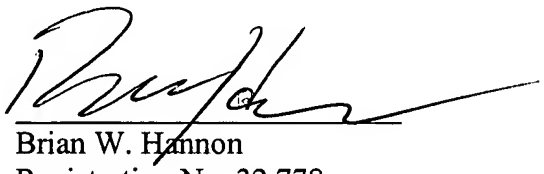
In short, it is submitted that the Examiner has not established a *prima facie* case of obviousness in that he has failed to articulate the motivation for the proposed modification. Indeed, when considering the objective teaching of the admitted prior art (where there is no suggestion of a problem with "the accurate transmission of force to the pressure sensor" by the projection 19) and the Griesbach et al. reference, it is submitted at a person of ordinary skill in the art would not have been motivated to modify the admitted prior art arrangement in the manner proposed by the Examiner.

Accordingly, reversal of the rejection of claim 4 is respectfully requested.

Unless a check is submitted herewith for the fee required under 37 C.F.R. §41.37(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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CLAIMS APPENDIX

CLAIM 4 ON APPEAL:

1-3 (Canceled)

4. (Currently Amended) A weather strip for an edge of an opening adapted to be closed by a motor driven closure element, said weather strip having a U-shaped configuration comprised of a transverse base portion and a pair of parallel gripping elements extending from opposite ends of the transverse base portion in parallel relationship to each other, a wall member disposed in spaced apart parallel relation to said transverse base portion and secured to the transverse base portion at opposite ends thereof to define a compartment, a pressure sensitive element disposed in said compartment and comprised of a pair of flexible electrically conductive strips separated by electrically insulating elements disposed between lateral longitudinal edges of the strips, a longitudinal projection protruding centrally from said transverse base portion into said compartment in engagement with said pressure sensitive element at a point in spaced relation to said longitudinal edges of said pressure sensitive element to maintain said pressure sensitive element spaced from said transverse base portion whereby upon application of pressure to said compartment by an obstruction located between said closure element and the weather strip the pressure sensitive element will always be deformed about the projection as a result of a fixed central location of the projection in relation to the pressure sensitive element to bring the electrically conductive strips into contact with each other.